

SERVED: MAY 12, 2009

**U.S. DEPARTMENT OF TRANSPORTATION
OFFICE OF HEARINGS
WASHINGTON, D.C.**

DEPT. OF TRANSPORTATION
DOCKETS

2009 MAY 12 P 2:48

IN THE MATTER OF

**KAREN BITON,
Respondent.**

**FAA DOCKET NO. CP08SO0030
(Civil Penalty Proceeding)**

DMS NO. FAA-2008-1305

IN THE MATTER OF

**TOMAR SWISA,
Respondent.**

**FAA DOCKET NO. CP08SO0028
(Civil Penalty Proceeding)**

DMS NO. FAA-2008-1304

**ADMINISTRATIVE LAW JUDGE'S ORDER DENYING
MOTION TO PERMIT WITNESSES TO TESTIFY BY
TELEPHONE AND THROUGH AN INTERPRETER**

Respondent Biton has filed a motion seeking leave to have two prospective witnesses testify at the hearing by telephone and through an English-Hebrew interpreter.

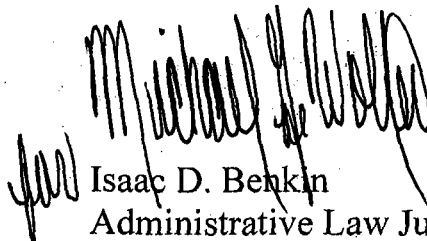
In general, testimony taken by telephone is not favored because it makes it difficult, if not impossible, for the administrative law judge to observe the demeanor of the witness and decide issues of credibility. For similar reasons, testimony in a foreign language is not favored; in addition, it makes effective cross-examination extremely difficult. For these reasons, a

party submitting a request for both telephonic testimony and testimony in a foreign language must shoulder a special burden of justifying both requests. This is especially the case where, as here, one can expect testimony from witnesses who will directly contradict one another as to the historical facts.

In this case, the Respondent has clearly failed to make a case for either of the requests. There has been no showing that the prospective witnesses are unable to testify articulately in English. There has been no showing that they are unable to travel to the United States in order to testify. And, finally, there has been no showing of the subject-matter of their prospective testimony – aside from the conclusory statement that “[t]hey would contradict the testimony of the Petitioner’s [sic] and prove Respondent’s [sic] were in full compliance with FAA rules.” This does not fulfill the Respondents’ obligation to provide “a brief statement of the subject matter on which each witness will testify.” Para. 9 of my Prehearing Order.

For these reasons, the pending motion is denied without prejudice.

IT IS SO ORDERED.

 , Atty Adv'r
Isaac D. Benkin
Administrative Law Judge

FAA Docket Nos. CP08SO0030 & CP08SO0028
(Civil Penalty Action)

**SERVICE LIST
ORIGINAL & ONE COPY**

Federal Aviation Administration
800 Independence Avenue, S.W.
Washington, DC 20591
Attention: Hearing Docket Clerk, AGC-430,
Wilbur Wright Building—Suite 2W1000¹

ONE COPY

Michael Shein, Esq.
The Law Office of Michael Shein, LLC
200 S.E. 6th St., Suite 100
Ft. Lauderdale, FL 33301
TEL: 954-766-6000
FAX: 954-766-6008

Theresa D. Dunn, Attorney
Office of the Regional Counsel
Southern Region, ASO-7
Federal Aviation Administration
P.O. Box 20636
Atlanta, GA 30320
TEL: 404-305-5200
FAX: 404-305-5223

The Honorable Isaac D. Benkin
Administrative Law Judge
Office of Hearings, M-20
U.S. Department of Transportation
1200 New Jersey Avenue, S.E.
East Building Ground Floor, Room E12-320
Washington, D.C. 20590
TEL: Attorney 202-366-0437
Legal Assistant 202-366-2132
FAX: 202-366-7536

¹ Service was by U.S. Mail. For service in person or by expedited courier, use the following address: Federal Aviation Administration, 600 Independence Avenue, S.W., Wilbur Wright Building—Suite 2W1000, Washington, DC 20591; Attention: Hearing Docket Clerk, AGC-430.